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2005 OCT 28 PM 3:46

T.R.A. DOCKET ROOM

October 28, 2005

Honorable Ron Jones, Chairman
Tennessee Regulatory Authority
ATTN: Sharla Dillon, Dockets
460 James Robertson Parkway
Nashville, TN 37243-5015

05-00302

Via Hand Delivery

Re: Application of NuVox Communications, Inc. for Authority to Provide Its Security
in Connection With Financing

Dear Chairman Jones:

Enclosed for filing please find the original and 13 copies of the Petition of NuVox Communications in the above-referenced matter. Also enclosed is my check in the amount of \$25.00 in payment of the filing fee. Thank you for your assistance. If you have any questions, do not hesitate to contact me.

Sincerely,



H. LaDon Baltimore
NuVox Communications, Inc.

LDB/dcg
Enclosures

cc: Susan Berlin
Melissa Conway, Esq.

**Before the
TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee**

October 28, 2005

<i>Re Application of</i>)	Docket No. _____
<i>NuVox Communications, Inc</i>)	
<i>For Authority to Provide Its</i>)	
<i>Security in Connection with Financing</i>)	

PETITION

NuVox Communications, Inc. ("NuVox Communications" or "Petitioner")¹, by its attorneys, hereby respectfully requests approval, to the extent it may be necessary², from the Tennessee Regulatory Authority ("TRA"), pursuant to T C A. §65-4-109, to incur indebtedness in connection with financing being arranged for its parent, Gabriel Communications Finance Company (the "Borrower"), a subsidiary of NuVox, Inc. ("NuVox" or "Parent"), consisting of senior credit facilities ("Senior Credit Facilities") of an amount up to \$160 million³ It is

¹ In late 2004, as part of an internal pro forma corporate restructuring, NewSouth Communications Corp. and NuVox Communications, Inc., a South Carolina corporation, two former operating subsidiaries of NuVox, were merged into NewSouth Holdings, Inc. This Delaware entity then changed its name to NuVox Communications, Inc. and became the single operating entity authorized to provide telecommunications services in Tennessee. The TRA approved the restructuring at its Authority Conference on November 8, 2004, Docket No. 04-00309. The Order of approval is dated April 13, 2005

² Although the Petitioner is seeking any necessary approval for its participation in this financing, it is doing so without prejudice to its right to assert that this type of transaction is beyond the jurisdiction of state commissions. *See, for example, State ex rel Utilities Commission v Southern Bell Tel & Tel*, 207 S.E.2d 771, *aff'd* 217 S.E.2d 543 (N.C. 1975). Further, based on Attorney General Opinion 99-119, issued May 14, 1999, Petitioner does not believe that the proposed multi-state financing requires TRA approval. However, should the TRA believe that approval is required, it is hereby requested.

³ Borrower's parent, NuVox, Inc. ("Parent"), and certain subsidiaries have existing indebtedness that includes the Borrower's Second Amended, Restated and Consolidated Credit Agreement dated as of May 21, 2004 ("Existing Credit Agreement"). The TRA was informed of the indebtedness relating to the Existing Credit Agreement in an amount (continued...)

anticipated that the loan documentation will permit the Borrower, during the term of the Senior Credit Facilities, to incur up to \$75 million of additional revolving credit facility commitments and/or term loans under the Senior Credit Facilities, under certain circumstances (“Incremental Facilities,” and together with the Senior Credit Facilities, “Credit Facilities”). It is anticipated that the Credit Facilities will be secured by Petitioner’s guarantee of payment and by the grant of a security interest in certain of Petitioner’s assets and the pledge of certain of Petitioner’s capital stock and debt. Thus, the Petitioner requests approval to incur debt in a total amount of \$235 million. In support of this Petition, NuVox Communications provides the following information:

I. The Petitioner

Parent, Borrower and Petitioner are each privately held Delaware corporations located at Two North Main Street, Greenville, South Carolina 29601. Petitioner is a direct, wholly owned subsidiary of the Borrower which in turn is a direct, wholly owned subsidiary of the Parent. Through its various operating subsidiaries, including NuVox Communications, the Parent has operations in 48 markets throughout 16 contiguous Midwestern and Southeastern states. The company is a rapidly growing facilities-based integrated communications provider of voice and data telecommunications services to business customers, with a fully deployed IP-centric network consisting of 28 Class 5 voice switches, 43 data switches, 281 collocations and a Sonus VoIP network in operation. Currently, NuVox’s operating subsidiaries collectively have approximately 41,500 customers. In Tennessee, NuVox Communications is authorized to

(...continued)

up to \$100 million in connection with Docket No. 04-00082, the merger of NewSouth Holdings, Inc. and NuVox, Inc., approved by order dated June 4, 2000.

provide local exchange and interexchange telecommunications services.⁴ NuVox Communications will continue to operate under its current name and CCN issued by the TRA and its business license as filed with the Tennessee Secretary of State's Office. Petitioner is also authorized by the FCC to provide domestic interstate and international telecommunications services.

II. Designated Contacts

The designated contact for questions concerning this Petition is:

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KELLEY DRYE & WARREN LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 955-9667
(202) 955-9792 fax

Counsel to Petitioner

Copies of any correspondence should also be sent to the following designated representative of the Petitioner:

Susan Berlin
Vice President, Senior Regulatory Counsel
NUVOX COMMUNICATIONS
2 North Main Street
Greenville, SC 29601
Tel. (864) 672-5000

⁴ See original CCN granted in Docket No. 98-00806 in order dated February 22, 2000, transferred to NuVox Communications in Docket No. 04-00309 in order dated April 13, 2005

III. Description of The Transaction

By this Petition, NuVox Communications seeks approval, should it be necessary, to incur indebtedness by giving its guarantee of payment and granting a security interest in certain of its assets in connection with financing of an amount up to \$235 million.⁵ Specifically, it is anticipated that, although Petitioner will not be a borrower, the contemplated Credit Facilities will be secured by Petitioner's guarantee of payment and the grant of a security interest in certain of its assets and a pledge of certain of Petitioner's capital stock and debt. It is expected that the Senior Credit Facilities will consist of: (i) a term loan facility of up to \$140 million ("Term Facility"); and (ii) a revolving credit facility of up to \$20 million available from time to time ("Revolving Facility"). The proceeds of the Senior Credit Facilities will be used in part to pay off the indebtedness under the Existing Credit Agreement. The Incremental Facilities will permit the Borrower to incur up to \$75 million of additional debt under the Senior Credit Facilities, under certain circumstances. Thus, the total amount of indebtedness is \$235 million.

The exact amounts and terms will not be finalized until the arrangements have been completed or shortly before funding and will reflect the market conditions then existing. Some of the terms such as interest may fluctuate during the term of the Credit Facilities due to changes in market conditions and the company's financial condition. The terms of the Credit Facilities are expected to be substantially as follows:

Lenders: The lenders are expected to be Bank of America Securities, LLC, Wachovia Capital Markets LLC and Wachovia Bank (as Syndication Agent) and

⁵ Petitioner filed a similar petition in Georgia, and such petition has been approved. Petitioner also filed notifications in Indiana, Kentucky, Louisiana, and North Carolina. Thus, all state action regarding this financing transaction is approved and complete. This type of multi-state financing transaction does not require notice, review or approval from any federal agency.

other banks, financial institutions and institutional lenders the composition of which may change over the life of the Credit Facilities.

Amount: Up to \$235 million (\$140 million under the Term Facility; \$20 million under the Revolving Facility; \$75 million under the Incremental Credit Facilities)

Maturity The Term Facility will be subject to repayment according to the scheduled amortization, with the final payment of all amounts outstanding, plus accrued interest, being due six (6) years after the closing date. The Revolving Facility will terminate and all amounts outstanding will be due and payable in full five (5) years after the closing date.

Interest: The interest rates per annum applicable to the Senior Credit Facilities will be LIBOR plus the Applicable Margin or, at the option of the Borrower, the Base Rate plus the Applicable Margin. The Applicable Margin with respect to the Revolving Facility is (i) for the first six (6) months after the closing date, 5.00-5.50% per annum, in the case of LIBOR rate advances, and 4.00-4.50% per annum, in the case of Base Rate advances, and (ii) thereafter, a percentage to be determined. The Applicable Margin with respect to the Term Facility is 5.00-5.50% per annum, in the case of LIBOR rate advances, and 4.00-4.50% per annum, in the case of Base Rate advances.

Security: It is expected that the Credit Facilities will be secured by the guarantee of Petitioner and by the grant of a lien and security interest in the following (i) all present and future shares of Petitioner's capital stock; (ii) all present and future intercompany debt; (iii) subject to materiality thresholds, all present and future property and assets, real and personal, including, but not limited to, equipment, accounts receivable, general intangibles, tangible and intangible assets required to own and operate any telecommunications systems, franchises, permits and licenses; and (iv) all proceeds and products of the property and assets described above.

IV. Public Interest Analysis

Approving this Petition will serve the public interest by enhancing the ability of the Petitioner to grow and compete in the highly competitive markets for telecommunications services in Tennessee and nationwide. The financing arrangement will provide NuVox Communications with the financial resources necessary to continue to produce new products and services and respond to the highly competitive telecommunications environment

NuVox competes in Tennessee and other markets with numerous other interexchange carriers and enhanced service providers as well as the incumbent local exchange carrier and other competitive local exchange carriers. Because NuVox is a non-dominant carrier it is not subject to rate of return regulation and its capital structure should not be a matter of concern to the TRA. In addition, because of the highly competitive environment in which it operates, the rates charged customers are subject to market discipline and the services offered generally are available from other carriers. As a result, the source of funds and capital structure of Petitioner would have little effect on customers in Tennessee or elsewhere. In the unlikely event that Petitioner's capital structure becomes too costly and rates rise, customers may simply migrate to other carriers with preferred rates. Thus, any adverse consequences from the Petitioner's financing decisions impact on shareholders, not on its customers, and any favorable consequences benefit both shareholders and consumers through higher profits, lower rates and better services.

Moreover, because the public interest is best served by assuring the presence of numerous telecommunications competitors in Tennessee, it is important to provide such competitors with the flexibility to arrange their financing in the manner they deem most appropriate to carry on their business so long as there is no adverse impact on the public. Approval of the financing transaction described herein is not expected to directly affect in any way the rates or services of Petitioner or its affiliates, or result in any change in control of Petitioner or its affiliates.

WHEREFORE, NuVox Communications, Inc. respectfully requests that the TRA approve, to the extent necessary, its participation in the financing transaction described herein of an amount up to \$235 million, and for such other and further relief as the TRA may deem appropriate.

Respectfully submitted,

NUVOX COMMUNICATIONS, INC.

By:



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